

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No.: 14-16

BALTIC AUTO SHIPPING, INC.,

Complainant,

– vs. –

**MICHAEL HITRINOV
a/k/a MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC.,**

Respondents.

**COMPLAINANT’S REPLY BRIEF IN FURTHER SUPPORT OF MOTION FOR AN
EXTENSION OF THE BRIEFING SCHEDULE**

Pursuant to Rules 69 and 71 of the Federal Maritime Commission’s (the “Commission”) Rules of Practice and Procedure (46 C.F.R. 502 *et seq.*), Complainant, through its Counsel, Marcus A. Nussbaum, Esq. respectfully submits this reply brief in further support of its motion seeking an extension of the briefing schedule for respondents’ Motion for Partial Summary Decision. This reply brief is respectfully submitted due to extraordinary circumstances necessitating the reply, and which are, to wit: to address various misrepresentations of fact set forth in respondents’ opposition.

As the Commission may recall, I am the attorney for the Complainant in the above captioned matter. With respect to respondents’ assertion that the instant application is untimely, as the Commission can see, the undersigned was continually assured by MSC, both in writing, and my telephone that the subpoenaed documents would be produced with sufficient time for the undersigned to review them and incorporate them into the opposition to respondents’ motion for partial summary decision. It was only when MSC’s staff informed the undersigned that additional

time would be necessary for the production of the documents, that the instant request for an extension became necessary. This subpoena request is now being dealt with at the highest levels of MSC's executive staff, and the undersigned was personally contacted by MSC's vice president on Friday evening after hours, to advise that documents will be produced as soon as possible.

With respect to respondents' misrepresentations regarding the nature of the subpoenaed documents, this is not a mere request for "ephemeral material" that respondents claim is "not likely to have been kept in the ordinary course of business." The documents sought are those that fall squarely within the record keeping requirements set forth in 46 CFR 515.33. The documentation sought by subpoena is also relevant and necessary as it will establish that the respondents committed the various Shipping Act violations alleged in the Complaint *subsequent to* the signing of the 2011 Settlement Agreement and that these events occurred within the three years statute of limitations for reparations under the Shipping Act.

Respondents' argument that complainant is seeking "stale correspondence" from MSC is disingenuous. If the respondents: (1) ordered MSC, via email, to place various shipments on hold and refused to release them subsequent to the signing of the 2011 Settlement Agreement, and within three years of the filing of the complaint; and (2) if respondents' refusal to release the containers caused complainant to incur storage and demurrage charges, then there is simply no merit to respondents' argument that these documents are not relevant to their motion for summary decision on the issue of the time bar.

As the Commission may also recall, the subpoena requests the telex releases for the shipments in attachments "C", "D", and "E" (which is the basis for respondents' motion for summary decision), which indicate the dates that they were issued, and which also show whether or not respondents instructed MSC to place a hold on various shipments, causing complainant to incur storage and demurrage charges. These events occurred subsequent to the signing of the 2011

Settlement Agreement and within three years of the filing of the complaint in this matter. These alleged Shipping Act violations have absolutely no connection with the 2011 Complaint, nor are they connected to the 2011 Settlement Agreement. The documents demanded by subpoena were the very same as those requested from respondents during the course of discovery, and which respondents refused to produce. To the extent that respondents oppose this motion, their motion for partial summary decision should be summarily denied, on the basis that there currently is information in their sole custody and control, which they have refused to produce, and which demonstrate triable issues of fact regarding the alleged Shipping Act violations.

With respect to counsel's argument that the undersigned failed to confer regarding the instant application for an extension of time, the undersigned emailed opposing counsel on Friday afternoon as soon as it became apparent that MSC would not meet its deadline. That request went unanswered and was followed up by two phone calls from the undersigned. To the extent necessary, the undersigned will provide cell phone records to establish that two phone calls were made to counsel's office on Friday afternoon, and specifically to the extensions of Gerard Doyle and David Gabel.

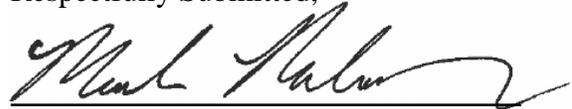
If there is any blame to place upon the undersigned, it is for one thing, and one thing alone: that the undersigned was optimistic enough to believe that MSC would provide the subpoenaed documents within one week of the original deadline, which is why the first application for an extension was made for only one week.

CONCLUSION

Accordingly, for the reasons set forth above, complainant requests that the instant motion for an extension of time be granted in its entirety, or in the alternative, that respondents' motion for partial summary decision be summarily denied due to information currently in respondents' exclusive custody and control and which are necessary for a ruling on respondents' motion.

Dated: April 27, 2015
Brooklyn, NY

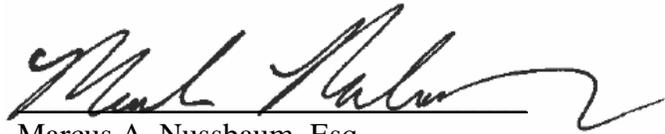
Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANT'S SECOND MOTION FOR AN EXTENSION OF THE BRIEFING SCHEDULE FOR RESPONDENTS' MOTION FOR PARTIAL SUMMARY DECISION** upon Respondents' Counsel, The Law Office of Doyle & Doyle, with the address of 636 Morris Turnpike, Short Hills, NJ 07078 by email (gdoyle@doyelaw.net).

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

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Dated: April 27, 2015 in Brooklyn, New York.